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Memorandum

From: Squire Patton Boggs

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Subject: The American Rescue Plan Act: Key Provision Analysis

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House and Senate Democrats handed President Joe Biden his first legislative victory, approving the President's $1.9 trillion *American Rescue Plan Act* (ARP) via the reconciliation process, which requires a simple majority vote for passage in the Senate. The President is expected to sign the measure into law on Friday.

This memorandum provides a high-level analysis of key provisions of the ARP. The bill expands on the $908 billion COVID-19 package, the *Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA)* that was enacted on December 27 and extends many CRRSAA provisions through the end of the federal FY21 (September 30, 2021). Unlike the CRRSAA, however, the bill provides significant direct and flexible state and local aid.

ISSUE AREAS

STATE AND LOCAL FUNDING

Similar to, but much larger than the Coronavirus Relief Fund in the CARES Act, the ARP allocates **$360 billion** in Coronavirus State and Local Fiscal Recovery Funds "to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID-19)."

Of the **$360 billion** allocated, **$350 billion** is broken into two categories: (1) States, Territories, and Tribal Governments (states) and (2) Metropolitan Cities, Counties, and Nonentitlement Units of Local Government (local governments). Funds provided by this legislation will remain available until December 31, 2024. One significant distinction between the funding for states and local governments is that the former may receive their funding all at once, while the latter will receive it in two equal tranches. The first (or, for some states, the only) tranche will be deposited within 60 days of ARP enactment; as applicable, the second tranche will be provided no sooner than one year after the first deposit was made. While not as explicit as the tranches for local governments, the ARP gives the Secretary of the Treasury discretion to break the payment to the states into two equal payments one year apart—50 percent provided within 60 days of enactment and the remaining funds provided not less than one year from that date. If the Secretary were to make such a determination, the impacted state(s) would be required to submit a second certification prior to the disbursement of additional funds.

Broadly, funding for both states and local governments can be used to:

- "Respond to the public health emergency with respect to the Coronavirus Disease (COVID-19), or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality."
- Provide premium pay up to $13 an hour to eligible municipal or county workers performing essential services to respond to COVID-19. This provision is capped at a maximum benefit of $25,000 per eligible worker.
- Provide "government services to the extent of the reduction in revenue […] due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year […] prior to the emergency."
- "Make necessary investments in water, sewer, or broadband infrastructure."

The term "eligible worker" is defined as "those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors." The legislation notes that it allows each governor or municipal leader to designate its employees that qualify as critical to protect the health and well-being of their residents. No Coronavirus State and Local Fiscal Recovery Funds may be used for pension liabilities.

The remaining $10 billion is allocated for funding for states, territories, and tribal governments to carry out capital projects "directly enabling work, education, and health monitoring, including remote options, in response to" COVID-19.

<u>States, Territories, and Tribal Governments - **$219.8 billion**</u>

- **$195.3 billion** to all 50 states and the District of Columbia
  - **$25.5 billion** shall be allocated evenly to each state, or $500 million each.

    - **$1.25 billion** shall be allocated to the District of Columbia to compensate for its treatment as a territory under the CARES Act (subtracting any monies it received from the Coronavirus Relief Fund of the CARES Act).
    - The remaining funds are to be distributed based on unemployment figures.
- **$4.5 billion** to territories
    - **$2.25 billion** to be provided equally to each territory.
    - **$2.25 billion** to be allocated based on the population of each territory.
- **$20 billion** to tribal governments
    - **$1 billion** to be provided equally to each tribe.
    - **$19 billion** to be allocated in a manner determined by the Secretary of the Treasury.
- Funds under this section can be used to cover costs incurred by a state, territory, or tribal government by December 31, 2024.
- Monies provided under this section can be transferred to a private nonprofit organization (like a public housing group), tribal organization, public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of state or local government.

<u>Metropolitan Cities, Counties, and Nonentitlement Units of Local Government - **$130.2 billion** in Two Equal Tranches</u>

- **$65.1 billion** for units of local government
    - **$45.57 billion** for metropolitan cities based on the Community Development Block Grant (CDBG) formula.
    - **$19.53 billion** for nonentitlement units of local governments.
        - This money is provided to a state with the expectation that the state pass the funds to the nonentitlement unit of local government within 30 days of receiving funds, though a state may seek up to two 30-day extensions.
        - A nonentitlement unit of local government may not receive more than 75 percent of its most recent budget as of January 27, 2020, and any excess monies must be returned to the Treasury.
- **$65.1 billion** for counties
    - County funds are distributed based on their populations relative to that of the United States, and the text adds that no urban county can receive less money than the amount it would receive if funds were allocated through the Community Development Block Grant formula.
    - The text notes that an "urban county" will receive less money if other funding under this bill is provided to a metropolitan city government (ex: San Diego County would see its funds reduced by an amount equal to the distribution for the City of San Diego).
    - If a county is not an eligible unit of local government, then funds would be provided to a state, and the state would be required to distribute funds to units of local government within each county.
    - The legislation treats the District of Columbia as a single county that is a unit of local government.
- The text notes that a consolidated government, like New Orleans, is eligible to receive funds as a city, county, and nonentitlement unit of local government, as applicable.
- Additionally, the legislation provides transfer authority for local governments to transfer funds to states if they so choose.

Coronavirus Capital Projects Fund - **$10 billion**

- As noted above, ARP provides funds to each of the 50 states and the District of Columbia for critical capital projects.
  - **$100 million** for each state.
  - **$100 million** for Puerto Rico and the District of Columbia.
  - **$100 million** divided evenly between the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
  - **$100 million** divided between tribal governments and the State of Hawaii
    - No tribe can receive less than $50,000.
    - The State of Hawaii will receive money in addition to its state money for the exclusive use of the Department of Hawaiian Homelands and the Native Hawaiian Education Programs.
- Any amount remaining after this initial appropriation shall be distributed to states through the following formula:
  - Fifty percent allocated based on population.
  - Twenty-five percent allocated based on the proportion of individuals living in rural areas as compared to the other states.
  - Twenty-five percent allocated based on the number of individuals living more than 150 percent below the poverty line.
- These funds shall be provided within 60 days of ARP's enactment.

Humanitarian Aid Funds

This provision of ARP provides **$500 million** for humanitarian aid to refugees. Specifically, the funds are dedicated to continuing the U.S. commitment to the International Organization for Migration and the activities of the UN High Commissioner for Refugees. While the funds are provided to aid these organizations and help them "prevent, prepare for, and respond to coronavirus," none of these funds may be used to pay for resettling refugees in the U.S.

LOCAL ASSISTANCE AND TRIBAL CONSISTENCY FUND

The bill provides **$2 billion** in funding for FY22 and FY23 intended to help communities and tribal governments that are negatively impacted by the implementation of/changes in a federal program. [1]

Of the **$1 billion** per fiscal year:

- **$750 million** is reserved for "eligible, revenue sharing" counties, allocated using a formula "taking into account economic conditions of each eligible revenue sharing county, using

1 "While not specified in the bill text itself, Sen. Ron Wyden (D-OR) noted in a statement for the record that this money is intended for counties and tribal governments with "a direct fiscal relationship with public lands and public resources, and noted as one example that "necessary environmental and wildlife protection laws have reduced the revenue sharing payments to counties that host U.S. Forest Service lands and timberlands managed by the Bureau of Land Management."

measurements of poverty rates, household income, land values, and unemployment rates as well as other economic indicators, over the 20-year period ending with September 30, 2021."

- **$250 million** is for tribal governments, allocated in a method taking into account the "economic conditions of each eligible Tribe."

Eligibility: Eligible, revenue sharing counties are:

1) "A county, parish, or borough—
    a. That is independent of any other unit of local government; and
    b. That, as determined by the Secretary, is the principal provider of government services for the area within its jurisdiction; and
    c. For which, as determined by the Secretary, there is a negative revenue impact due to implementation of a federal program or changes to such program.
2) The District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands."

Uses: The funds may be used for any government purpose other than lobbying.

HOUSING AND RENTAL ASSISTANCE

Emergency Rental Assistance

The bill provides **$21.55 billion** in additional funding for the Emergency Rental Assistance Program (ERAP). Allocations for states and units of local government will be made in the same manner as the CRRSAA. As with the CRRSAA, eligible units of local government are those jurisdictions with a population greater than 200,000. In order to receive a payment, a local government must provide a certification – as with the CARES Act and the CRRSAA – to Treasury indicating that the recipient will use the funds in a manner consistent with the law.

Of the **$21.55 billion:**

- Each state (as well as the District of Columbia) shall receive at least **$152 million**;
- **$305 million** is reserved for U.S. territories;
- **$2.5 billion** is reserved for payments to high-need grantees; and
- **$30 million** is reserved for administrative expenses.

High-Need Grantees: The bill directs the Treasury Secretary to allocate $2.5 billion to "high-need grantees." Factors for allocating the funds include:

1) The number of very-low-income renter households paying more than 50 percent of income on rent or living in substandard or overcrowded conditions;
2) Rental market costs; and
3) Change in employment since February 2020.

Eligibility: Eligible uses of funding include rent and rental arrears, utilities and home energy costs and arrears, and other expenses related to housing (to be defined by the Secretary). Eligible households cannot receive more than 18 months of aggregate assistance under the ARP and the CRRSAA combined.

Eligible households are defined as renter households that:

- Have one or more household members who qualify for unemployment benefits or experienced financial hardship due, directly or indirectly, to the pandemic;
- Have one or more household members who can demonstrate a risk of experiencing homelessness or housing instability; and
- Have a household income not more than 80 percent of AMI.

Grantees may also use up to ten percent of funds for housing stability services, including case management and "other services intended to help keep households stably housed," and up to 15 percent of funds for administrative costs, including data collection and reporting requirements.

Timing: Forty percent of each grantees' total allocation will be provided within 60 days of the ARP's enactment. Subsequent allocations will be distributed under a procedure established by the Secretary, which will require grantees to obligate at least 75 percent of funds disbursed before receiving additional funds.

Expiration: Grantees may use any funds unobligated by October 1, 2022, for affordable rental housing and eviction prevention purposes (to be defined by the Secretary) serving very-low-income families, although 75 percent of the funds must first be obligated by the grantee for purposes defined in the ARP. Treasury may recapture any excess unobligated funds after March 31, 2022, and reallocate those funds to previous grantees.

Additionally, the bill extends the deadline for the first tranche of ERAP funding provided under the CRRSAA from December 31, 2021, to September 30, 2022.

Housing Counseling

The bill includes **$100 million** for the Neighborhood Reinvestment Corporation for grants to "housing counseling intermediaries approved by the Department of Housing and Urban Development, State housing finance agencies, and NeighborWorks organizations for providing housing counseling services." NeighborWorks organizations are limited to 15 percent of the total funds.

At least 40 percent of the grant funds are reserved for counseling organizations that 1)"target housing counseling services to minority and low-income populations facing housing instability; or 2) provide housing counseling services in neighborhoods having high concentrations of minority and low-income populations."

Housing counseling services include:

1) Housing counseling provided directly to households facing housing instability, such as eviction, default, foreclosure, loss of income, or homelessness;
2) Education, outreach, training, technology upgrades, and other program related support; and
3) Operational oversight funding for grantees and subgrantees that receive funds under this section.

Emergency Housing Vouchers

The bill provides **$5 billion** in emergency housing vouchers for tenant-based rental assistance. This includes:

- Incremental emergency vouchers;
- Renewals of the vouchers;
- Administrative costs;
- Other eligible expenses "defined by notice to prevent, prepare, and respond to coronavirus to facilitate the leasing of the emergency vouchers, such as security deposit assistance and other costs related to retention and support of participating owners"; and
- Adjustments for public housing agencies that had significant voucher per-unit cost increases "due to extraordinary circumstances or that, despite taking reasonable cost savings measures, would otherwise be required to terminate rental assistance for families as a result of insufficient funding."

Twenty million is reserved for the Secretary for administrative and implementation costs. Of the $20 million, up to $10 million may be used by the Secretary to make new or increase prior awards to technical assistance providers in order to provide an "immediate increase" in technical assistance and capacity building available to public housing agencies (PHAs).

Eligibility: Qualifying individuals and families include those who are:

- Homeless or at risk of homelessness;
- "Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking" (to be defined by the Secretary); or
- Recently homeless (to be defined by the Secretary) and for whom the assistance will prevent homelessness/high risk of housing instability.

Allocation: The Secretary will allocate the vouchers among PHAs administering the Housing Choice Voucher program using a new formula that "includes public housing agency capacity and ensures geographic diversity, including with respect to rural areas." The Secretary may revoke and redistribute any vouchers not used within a reasonable period of time.

Waivers: The Secretary may waive or alter any requirements of the program, except those related to fair housing, nondiscrimination, labor standards, and the environment.

Timing: PHAs will be notified of the number of vouchers allocated within 60 days of ARP enactment.

Expiration: After September 30, 2023, PHAs cannot reissue ARP vouchers when assistance ends.

Homelessness Assistance and Supportive Services Program

The bill includes **$5 billion** for the Department of Housing and Urban Development (HUD) for:

- Tenant-based rental assistance.
- Affordable housing.
- Supportive services for those not already receiving them, which includes housing counseling, homeless prevention services, and transitional housing.

- Acquisition and development of non-congregate shelter units, which may be converted to permanent affordable housing, used as emergency shelters, or remain as non-congregate shelter units.

Of the funding, up to $25 million shall be used by the Secretary to make new or increase prior awards to technical assistance providers in order to provide an "immediate increase" in technical assistance and capacity building available to grantees. Up to $50 million shall be used for administration costs.

There are no matching requirements for this funding.

Eligibility: Qualifying individuals and families include those who are:
- Homeless or at risk of homelessness;
- "Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking" (to be defined by the Secretary);
- In other populations where assistance would prevent homelessness/high risk of housing instability; or
- Veterans and families that include veteran members meeting one of the qualifications above.

Grantees may use up to 15 percent of funds for administrative and planning costs. Five percent of funds may be used for operating expenses for community housing development organizations and nonprofit organizations, so long as the funding is used to develop capacity of organizations to carry out activities related to homelessness assistance and supportive services.

Timing and Allocation: The Secretary shall allocate funding via the HOME Investment Partnerships Program formula. Funds shall be allocated within 30 days of enactment.

Waivers: The Secretary may waive or alter any requirements of the program.

<u>Homeowner Assistance Fund</u>

The bill includes **$9.96 billion** for the Homeowners Assistance Fund, to be distributed to states, territories, and tribal organizations for "preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020."

Of the $9.96 billion:
- Each state shall receive at least **$50 million**
- **$30 million** is reserved for territories

Remaining funds will be allocated "based on homeowner need," determined by unemployment averages and the number of mortgagors with payments more than 30 days late or mortgages in foreclosure.

Eligible expenses:
- Mortgage payment assistance

- Financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing related costs related to a period of forbearance, delinquency, or default
- Principal reduction
- Facilitating interest rate reductions
- Payment assistance for:
    - Utilities, including electric, gas, home energy, and water;
    - Internet service, including broadband internet access service;
    - Homeowner's insurance, flood insurance, and mortgage insurance; and
    - Homeowner's association, condominium association fees, or common charges;
- Reimbursement for states, local governments, and tribal organizations for funds expended starting January 21, 2021, and ending the day the Homeowner Assistance Fund is disbursed, addressing housing and mortgage stability assistance related to the COVID-19 pandemic;
- Other housing and mortgage stability assistance as defined by the Secretary

Prioritization: At least 60 percent of funds must be used by grantees to help homeowners with less than or equal to 100 percent AMI or U.S. median income; remaining funds shall be prioritized for social disadvantaged individuals.

Timing: Funds will be distributed within 45 days of enactment. Funds are available through September 30, 2025.

<u>USDA Direct Loan Programs</u>

The ARP includes **$39 million** for USDA's Section 502 and 504 direct loan programs.

<u>Fair Housing</u>

The bill includes **$20 million** for the Fair Housing Initiatives Program, to ensure additional resources for fair housing organization activities related to the COVID-19 pandemic.

<u>Eviction Moratorium</u>

The Centers for Disease Control (CDC) eviction moratorium that was extended through March 31, 2021 is not addressed or extended in the ARP.

FEDERAL EMERGENCY MANAGEMENT AGENCY

The bill appropriates **$50 billion** through September 30, 2025, to the Federal Emergency Management Agency's (FEMA) Disaster Relief Fund. The bill continues disaster-related funeral expenses as an eligible activity, at a 100 percent federal cost-share.

All FEMA funding will remain available until September 30, 2025. Other programs housed within FEMA also received funding through this package, notably:

- **$400 million** for Emergency Food and Shelter Program funding, plus an additional **$110 million**, administered through the program, to provide "humanitarian relief to families and individuals encountered by the Department of Homeland Security";
- **$100 million** for the Assistance to Firefighters Grant (AFG) program;

- **$200 million** for the Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program; and
- **$100 million** for the Emergency Management Performance Grant (EMPG) Program.

WATER AND ENERGY

The ARP provides additional funds for two existing ratepayer assistance programs. It would provide **$4.5 billion** for FY21 and FY22, collectively, for the Low-Income Home Energy Assistance Program (LIHEAP), and **$500 million**, to be used until expended, for the new Low-Income Household Drinking Water and Wastewater Emergency Assistance Program. This new program provides funds to assist low-income households that are paying a high proportion of their household income for drinking water and wastewater services during the COVID-19 pandemic.

The bill also provides **$100 million** for FY21, to be used until expended, for the Environmental Protection Agency (EPA) to address health outcome disparities for minority and low-income populations caused by pollution.

NUTRITION

The ARP contains additional funding for several agricultural and nutrition services program that have experienced growing demand during the pandemic. The bill particularly focuses on increasing funds, voucher limits, and expanding availability for food assistance for families with school-aged children. The bill also provides support for socially disadvantaged farmers and ranchers.

Specifically, the bill extends the current 15 percent increase in funding for the Supplemental Nutrition Assistance Program (SNAP) through the rest of FY21. It also provides:

- **$25 million** for FY21 to expand assistance for technical improvements for SNAP online purchasing and provide technical assistance to educate retailers on the online process; and
- **$27 million** for FY21 for the Commodity Supplemental Food Program.

For the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the bill provides:

- **$490 million** for FY21 for states to increase the amount of a cash-value voucher under the program for qualified food packages under $35; and
- **$390 million** for FY21 for the U.S. Department of Agriculture (USDA) to improve outreach and modernize the WIC program to encourage increased participation.

The ARP also expands the Pandemic Electronic Benefit Transfer (P-EBT) program, which was originally authorized in the Families First Coronavirus Response Act of 2020. The P-EBT program provides eligible schoolchildren who would typically receive free or reduced price meals temporary emergency nutrition benefits on an EBT card in order to purchase food. This bill expands the program through the duration of the pandemic and includes summers outside the normal school year.

The bill also provides the following:

- **$4 billion** for FY21, to remain until expended, to support the food supply chain, including purchasing and distributing agricultural commodities to nonprofit organizations and providing grants and loans for food processors, distributors, and farmers; and
- **$1.01 billion** for FY21, to remain until expended, to support socially disadvantaged farmers and ranchers.

HEALTHCARE

Funding for COVID-19 Testing and Vaccination

The legislation provides **$14.05 billion** for vaccine production, distribution, and administration, including:

- **$7.5 billion** to the Centers for Disease Control and Prevention (CDC) to administer, monitor, and track the COVID-19 vaccine;
  - The CDC may award grants or cooperative agreements to states, localities, or local health departments to distribute this funding.
  - States and localities will also receive supplemental funding to ensure the vaccine funding they received through the CRRSAA will equal the funding they should have received as calculated by the base formula of the FY20 Public Health Emergency Preparedness (PHEP) cooperative agreement awards.
- **$6.05 billion** to the U.S. Department of Health and Human Services (HHS) to support research, development, production, and manufacturing of the COVID-19 vaccine, therapeutics, and related medical products; and
- **$500 million** for the Food and Drug Administration (FDA) to support the agency in its reviews of COVID-19 vaccines and therapeutics.

Additional funding is also provided for public health agencies regarding testing, contact tracing, and other research activities:

- **$47.8 billion** for HHS to detect, diagnose, trace, and monitor COVID-19 infections.
  - The HHS Secretary may distribute this funding to states, local health departments, and localities through a grant or cooperative agreement program.
  - Among other uses, the funding can be used by state and local health departments to expand testing sites or expand laboratory capacity or support the procurement of testing supplies and related diagnostics.
  - At the federal level, the funding is also dedicated to developing a national strategy for testing and contact tracing.
- **$1.75 billion** to the CDC to expand the agency's research activities on the virus and identify mutations.
  - Funding will be distributed through grants or cooperative agreements to states, localities, and public health laboratories.
- **$500 million** for the CDC to establish data surveillance and analytics infrastructure for continual disease monitoring.
- **$1 billion** for the CDC to strengthen vaccine confidence through public education campaigns.

The ARP also provides funding to support the medical workforce, including:

- **$7.6 billion** to HHS to support the public health workforce;

    - The funding will be awarded via grants to state, local, and territorial public health departments or non-profit organizations to hire contact tracers, nurses, epidemiologists, communications personnel, and other related positions.
- **$100 million** for the Medical Reserve Corps;
- **$800 million** for National Health Service Corps Loan Repayment and Scholarship Program;
    - $100 million will be given directly to states for primary care physician loan repayment programs.
- **$200 million** for Nurse Corps Loan Repayment Program for FY21; and
- **$330 million** for Teaching Health Centers Graduate Medical Education (THCGME) Programs.
    - HHS can make payments to new programs, provide a $10,000 increase to the per resident amount, award THCs for establishing new accredited or expanded primary care residency programs, and cover administrative costs.

The legislation provides **$7.6 billion** in direct allocations for Community Health Centers. The funding can be used for vaccine administration, to diagnose and treat COVID-19 infections, and to expand community outreach related to COVID-19. **$20 million** of this allocation will be reserved for Native Hawaiian Health Centers.

The legislation provides a total of **$3.9 billion** for the Substance Abuse and Mental Health Services Administration (SAMHSA). The funding includes:

- **$1.5 billion** for the Substance Abuse Prevention and Treatment Block Grant program;
- **$1.5 billion** for Community Mental Health Services Block Grant program;
- **$140 million** for mental and behavioral health training for health care professionals;
    - Funding will be awarded through grants to community health clinics, hospitals and other medical centers, and academic health centers.
- **$30 million** for grants to states, localities, and non-profit organizations to carry out overdose prevention programs and other substance use disorder treatment activities;
- **$50 million** for community behavioral health program grants for states, localities, and non-profit organizations;
- **$10 million** for the National Childhood Traumatic Stress Network;
- **$50 million** for existing SAMHSA grant programs, including Project AWARE and youth suicide prevention programs;
- **$100 million** for the Behavioral Health Workforce Education and Training Program;
- **$80 million** for pediatric mental health care; and
- **$420 million** for Community Behavioral Health Clinics.

The legislation also includes other health care funding provisions, notably:

- **$8.5 billion** for rural health care providers for COVID-19 expenses and lost revenues attributable to the pandemic;
- **$200 million** for Skilled Nursing Facilities;
- **$250 million** for Nursing Home Strike Teams;
- **$50 million** for the Title X Family Planning Program; and
- **$6.1 billion** for the Indian Health Service.

COBRA and Affordable Care Act (ACA)

The legislation includes a variety of policy provisions related to the Affordable Care Act (ACA) and COBRA health insurance coverage for unemployed individuals. Notably, the ARP enhances and expands ACA premium tax credits for calendar years 2021-2022. It eliminates the 400 percent Federal Poverty Level (FPL) subsidy cap for Premium Tax Credits, meaning premiums for plans purchased through health insurance exchanges are limited to no more than 8.5 percent of household income. For individuals who received unemployment insurance in 2021, any income over 133 percent of the FPL will not be counted to determine premium subsidies, and ACA plan coverage for families making up to 150 percent of the FPL will be free. In addition, the legislation suspends the requirement to return excess 2020 premium subsidies and allocates **$20 million** to establish a grant program for states to modernize their state-based marketplaces.

For COBRA health insurance coverage, the federal government will fund 100 percent of COBRA subsidies for individuals who lost coverage due to COVID-19. The ARP also extends the COBRA election period and expedites review of denied coverage, as well as reimburses employers and plans for covering federal COBRA subsidies through payroll tax credit.

Medicaid, Medicare, and the Children's Health Insurance Program (CHIP)

The legislation requires that Medicaid and CHIP fully cover the COVID-19 vaccine and therapeutics without cost sharing through one year after the end of the public health emergency (PHE). The Federal Medicaid Assistance Percentage (FMAP) will be increased to 100 percent for vaccination through one year after the end of the PHE. The legislation allows states to extend Medicaid and CHIP eligibility for pregnant women for up to one year post-partum for five years.

In addition, the legislation provides an enhanced FMAP of 85 percent for three years to states that cover mobile behavioral health crisis intervention services and provides $150 million in planning grants for states to establish these programs. In addition, the legislation increases the FMAP by five percent for two years for states that choose to expand Medicaid. Urban Indian Health Organizations and Native Hawaiian Health Care Systems will also receive a 100 percent FMAP for two years. In addition, the ARP increases FMAPs by ten percent through March 31, 2022, for improvements to Medicaid home- and community-based services.

The bill also establishes a floor on the Medicare Area Wage Index for hospitals in all-urban states and allows Medicare payments throughout the PHE to ambulance providers for any services delivered to beneficiaries outside of a hospital if the patient cannot be transferred to a hospital due to COVID-19 concerns. The legislation eliminates the cap on Medicaid drug rebates beginning in 2024.

EDUCATION

Department of Education

The ARP provides **$125.8 billion** for the Elementary and Secondary School Emergency Relief Fund. Under the bill, each state must make allocations to local educational agencies no later than 60 days after the receipt of the funds. The bill also requires that educational agencies receiving relief funds publish a plan to return to in-person instruction within 30 days.

The ARP provides **$2.75 billion** for allocations to governors under the Emergency Assistance to Non-Public Schools Program, to provide assistance to non-public schools that enroll a significant percentage of low-income students and are most impacted by the pandemic.

The legislation also adds new set-asides in education funding:

- **$1.25 billion** for evidence-based summer enrichment;
- **$1.25 billion** for afterschool programs;
- **$3 billion** for grants under the Individuals with Disabilities Education Act, including **$550 million** for programs for preschools, infants, and toddlers; and
- **$800 million** to identify and provide homeless children and youth with wrap-around services in light of the challenges of COVID-19.

The legislation provides **$39.6 billion** for the Higher Education Emergency Relief Fund. Under the bill, public and private non-profit universities will receive allocations following the same allocation structure as the CRRSAA. Universities will likewise be required to spend at least 50 percent of this funding on emergency financial aid grants to students.

The ARP also includes a "90/10" provision, which expands the 90 percent cap on how much revenue proprietary institutions of higher education can receive from the federal government to include all types of federal assistance, such as veterans' benefits. The bill requires the Department of Education to begin a negotiated rulemaking process on the 90/10 provision on October 1, 2021. The bill further clarifies that the penalties associated with the 90/10 provision will not go into effect until at least 2024.

The bill provides research and development funding for COVID-19 response. Specifically, the bill provides an additional **$150 million** to the National Institute of Standards and Technology (NIST), to fund awards for research, development, and testbeds to prevent, prepare for, and respond to COVID-19. Additionally, the bill provides **$600 million** for the National Science Foundation (NSF), to fund or extend new and existing research grants, cooperative agreements, scholarships, fellowships, and apprenticeships, and related administrative expenses to prevent, prepare for, and respond to COVID-19.

Finally, the ARP mandates that any type of COVID-19 student loan forgiveness be tax-free for the borrower over the next five years, through January 1, 2026.

CHILD CARE GRANTS

The ARP provides billions of dollars for child care grants, including:

- **$14.9 billion** for FY21 for the Child Care and Development Block Grant program, which provides child care subsidies for low-income families with children under age 13;
- **$23.9 billion** for FY21 for child care stabilization grants for child care providers, specifically to help pay for personnel, training, rent, and sanitation at child care facilities; and
- **$1 billion** for FY21 for the Head Start program, which promotes the school readiness of young children from low-income families.

TRANSPORTATION

Transit

The bill includes **$30.4 billion** for transit agencies. Funds are available for operating expenses to "prevent, prepare for, and respond to coronavirus," including the reimbursement for payroll of public transportation employees, operating costs "to maintain service due to lost revenue due as a result of the coronavirus public health emergency, including the purchase of personal protective equipment," and payment for administrative leave of operations personnel due to reductions in service dating back to January 20, 2020. When possible, funds shall be directed to payroll and operations. The federal cost-share is 100 percent.

Of the **$30.4 billion**:

- **$26.09 billion** is for urbanized area formula grants. No agency can receive more than 132 percent of its urbanized area's 2018 operating costs (based on the data in the National Transit Database) in combined relief funding. Remaining funds will be distributed via formula.
- **$317.2 million** is for formula grants for rural areas. No agency can receive more than 150 percent of its 2018 rural operating costs (based on the data in the National Transit Database) in combined relief funding.
- **$50 million** for grants for the enhanced mobility of seniors and individuals with disabilities.
- **$100 million** for bus operator partners.
- **$25 million** for planning grants, "for the planning of public transportation associated with the restoration of services as the coronavirus public health emergency concludes."
- **$1.675 billion** for Capital Investment Grants, of which:
    - **$1.425 billion** is for new start and core capacity projects; and
    - **$250 million** is for small starts projects.
- **$2.207 billion** in discretionary assistance.

Discretionary Assistance

The **$2.207 billion** in discretionary assistance is available to agencies that "that, as a result of COVID–19, require additional assistance for costs related to operations, personnel, cleaning, and sanitization combating the spread of pathogens on transit systems, and debt service payments incurred to maintain operations and avoid layoffs and furloughs." In its application, a transit agency must provide:

1) Estimates of financial need;
2) Data on reductions in farebox or other sources of local revenue for sustained operations;
3) A spending plan for such funds; and
4) Demonstration of expenditure of greater than 90 percent of funds available to the applicant from funds made available for similar activities in fiscal year 2020.

Applications will be evaluated based on demonstrated financial need, including "projections of future financial need to maintain service as a percentage of the 2018 operating costs that has not been replaced by the funds made available to the eligible recipient or subrecipient" under previous funding bills. FTA shall issue the Notice of Funding Opportunity (NOFO) for this project within 180 days of ARP's enactment, and funds shall be awarded within 120 days of the NOFO's application deadline.

Capital Investment Grants

Of the **$1.675 billion** for Capital Investment Grants, $1.25 billion is for new start and core capacity projects, to be proportionately provided to all projects with existing full funding grant agreements that had allocated funding in 2019 or 2020 but have not yet opened for revenue service. An additional $175 million is for new start and core capacity projects that had existing full funding grant agreements that received an allocation prior to FY18 but have not yet opened for revenue service. Two hundred and fifty million is for small starts projects.

Airports

The bill includes **$8 billion** for airports, including:

- **$6.492 billion** for primary airports and certain cargo airports "for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments," distributed via the Airport Improvement Program formulas. Any remaining amounts will be distributed based on enplanements;
- **$608 million** for the federal share (up to 100 percent of the costs) for any grant awarded in FY21, or in FY20 with less than a 100 percent federal share, for an airport development project;
- **$100 million** for general aviation and commercial service airports; and
- **$800 million** for sponsors of primary airports to provide rent and minimum annual guarantee relief to airport concessions.

Similar to CRRSAA, and in response to the CARES Act – in which some airports received tens of years of operating costs – the bill stipulates that no additional funding from this bill will be provided to any airport that was allocated more than four years of operating funds in FY20.

Workforce Retention Requirement:

The bill includes a requirement that a grantee maintain 90 percent of its March 27, 2020 workforce through September 30, 2021, although the Secretary of Transportation can grant a waiver as a result of economic hardship or if the requirement reduces aviation safety and security. The workforce retention requirement does not apply to nonhub or nonprimary airports.

BROADBAND AND TELECOMMUNICATIONS

The bill establishes a **$7.17 billion** Emergency Connectivity Fund to provide funding to eligible schools or libraries for the purchase of eligible equipment or advanced telecommunications and information services (or both). These funds will remain available until September 30, 2030. Purchases must be made during the COVID-19 public health emergency (PHE), with a grace period extending to the first June 30 that occurs following the one-year mark of the end of the PHE. The Federal Communications Commission (FCC) will determine a reasonable maximum amount of coverage available to each entity. The following stipulations apply:

- In the case of a school, students and staff must use the equipment or services at locations other than the school; and
- In the case of a library, patrons must use the equipment or services at locations other than the library.

Eligible entities: elementary schools, secondary schools, or libraries (including tribal elementary schools, tribal secondary schools, or tribal libraries) eligible for support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)). Libraries can include library consortiums.

Eligible equipment: Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices (i.e., laptops, tablets, or computers).

ECONOMIC IMPACT (DIRECT CASH ASSISTANCE) PAYMENTS

The legislation includes direct cash assistance for eligible taxpayers. The recovery rebates are **$1,400** per individual and an additional **$1,400** for each dependent. Those eligible for the full payment include individuals earning under $75,000, heads of households earning under $112,500, and married couples who file jointly earning under $150,000. The payments would phase out completely for individuals earning $80,000, heads of household earning $120,000, and married couples earning $160,000.

Unlike previous COVID-19 direct payments, the $1,400 for each dependent will not only include children under 17, but also dependent college students and some individuals with disabilities.

The most recent tax return (whether it be 2019 or 2020) will be used to determine salary eligibility and number of dependents.

UNEMPLOYMENT INSURANCE AND BENEFITS

The ARP outlines the following unemployment and staffing benefits:

- Provides **$300** per week for all workers receiving unemployment benefits through September 6, 2021;
    - Makes the first $10,200 of benefits tax exempt for households with incomes of less than $150,000;
- Increases the maximum number of weeks an individual may claim benefits through regular state unemployment plus the Pandemic Emergency Unemployment Compensation (PEUC) program, or through the Pandemic Unemployment Assistance (PUA) program to 74 weeks;
- Extends emergency unemployment relief for governmental entities and nonprofits to August 29, 2021, and increases the reimbursement rate to 50 percent for the period between March 31 and August 29, 2021;
- Extends until August 29, 2021, full federal funding for the first week of compensable regular unemployment for applicants in states with "waiting weeks," which are gap periods when no benefits are issued;
- Extends temporary financing of short-time compensation payments in states with and without programs in law through August 29, 2021;
- Extends temporary assistance for states with advances through August 29, 2021;
- Extends full federal funding of extended unemployment compensation through August 29, 2021; and
- Extends emergency state staffing flexibility through August 29, 2021.

Additionally, the package provides support for the railroad industry in particular:

- Extends additional enhanced benefits under the Railroad Unemployment Insurance Act through August 29, 2021;
  - For registration periods beginning after March 14, 2021, but on or before August 29, 2021, individuals will receive a recovery benefit of **$800.**
- Provides extended unemployment benefits under the Railroad Unemployment Insurance Act, allowing for up to 240 days of coverage instead of 120 days, as well as extending the eligibility deadline to August 29, 2021; and
- Extends the waiver of the seven-day waiting period for benefits under the Railroad Unemployment Insurance Act until August 29, 2021.

Finally, the measure provides **$200 million** for the Wage and Hour Division, the Office of Workers' Compensation Programs, the Office of the Solicitor, the Mine Safety and Health Administration, and the Occupational Safety and Health Administration to carry out COVID-19-related worker protection activities.

EMPLOYEE LEAVE AND PAYROLL TAX CREDITS

The ARP contains provisions addressing emergency federal employee leave, but does not continue the paid sick leave and paid Family and Medical Leave Act mandates on employers with fewer than 500 employees and government employers that were included in the Families First Coronavirus Response Act (FFCRA) and expired at the end of 2020.

The FFCRA, as amended by the COVID-19-related Tax Relief Act of 2020, provided small and midsize employers refundable tax credits that reimbursed them, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19.[2] The ARP further extends and expands the coverage of the credits provided by FFCRA for paid sick leave and paid Family and Medical Leave through September 30.

Government employers (including local governments and public institutions of higher education) were explicitly excluded from these tax benefits in the FFCRA and remain ineligible through the ARP unless a 501(c)(1) and exempt from tax under section 501(a).

VETERANS AFFAIRS

The ARP includes **$14.5 billion** for medical care and health needs, including up to **$4 billion** for veterans to receive care outside the VA. Other funding provisions for the Department include:

- **$750 million** for state veterans homes;
- **$272 million** for claims and appeals processing; and
- **$100 million** for supply chain modernization initiatives.

[2] "COVID-19-Related Tax Credits for Paid Leave Provided by Small and Midsize Businesses FAQs." Internal Revenue Service. Updated January 28, 2021.

For job training, the ARP would provide **$386 million** to create a rapid retraining program for veterans who are unemployed because of the pandemic and who have not received VA educational assistance or unemployment payments. The program would provide up to 12 months of assistance for eligible veterans to receive training for high-demand jobs or in high-technology programs. The VA would provide monthly benefit payments directly to eligible programs and a monthly housing stipend to veterans. Programs would receive 50 percent of funding when the veterans start, 25 percent when they complete the program, and 25 percent when they find a job.

The ARP would provide **$1 billion** for the VA to waive health insurance copayments and other cost-sharing expenses incurred by veterans from April 6, 2020, when the Department first paused medical billing, through September 30, 2021. The VA would be directed to reimburse veterans for copayments made during that period.

The legislation would create an Emergency Department of Veterans Affairs Employee Leave Fund in the Treasury, and provide **$80 million** for that fund. Funding would be used to cover paid leave for Veterans Health Administration employees, including those who must quarantine or care for family members due to COVID-19-related concerns, must care for children due to school closures, or are recovering because of complications from immunizations. Employees would be eligible for paid leave based on their hourly rates through September 30, 2021. Full-time employees could not receive more than 600 hours of paid leave, or $2,800 in a biweekly pay period. This would be in addition to other paid leave and could not be taken concurrently with any other paid leave. Any paid leave provided would reduce total service used to calculate retirement benefits.

SMALL BUSINESS

Paycheck Protection Program

- Provides an additional **$7.2 billion** for the Paycheck Protection Program (PPP)
- Makes the following changes to PPP eligibility:
  - Nonprofits are eligible if their federal lobbying activities comprise less than 15 percent of their annual activities and less than $1 million in the previous tax year.
  - "Internet only" news publishers that were previously ineligible are eligible to apply provided they have less than 500 employees. Entities must certify that the funds will support local news.
  - Some nonprofits that currently quality for PPP loans, such as 501(c)(3) groups, cannot have more employees than the Small Business Administration's (SBA) size standards for the relevant industry. Nonprofits are still subject to the SBA's restrictions for affiliated entities.
- PPP loan forgiveness is extended to include payments made on behalf of individuals qualifying for COBRA health insurance continuation coverage. The forgiveness only applies to applications received after the law's enactment.

Economic Injury Disaster Loans

- Provides **$15 billion** for additional advance Economic Injury Disaster Loans (EIDLs).

    - **$10 billion** is allocated for entities that did not receive their full eligible advance payments under CRRSSA. These entities include recipients with 300 or fewer employees and economic losses of at least 30 percent over eight weeks compared with a similar period before the pandemic.
    - **$5 billion** is allocated to new supplemental payments of $5,000 to entities with ten or fewer employees that had economic losses of more than 50 percent during the covered period.
- **Eligible entities:** The ARP has not provided new eligibility details. Existing eligibility includes small businesses who can demonstrate a 30 percent reduction in revenue during an eight-week period beginning on March 2, 2020.
- Clarifies that EIDL loans are excluded from gross income for tax purposes

<u>Restaurants and Bars</u>

- Provides **$28.6 billion** for a new Restaurant Revitalization Fund to be administered by the SBA.
    - For 21 days after enactment, SBA is required to prioritize eligible entities owned by women, veterans, or socially or economically disadvantaged individuals.
    - For 60 days after enactment, $5 billion is reserved for eligible entities with gross revenue of $500,000 or less in 2019.
- Grants will cover the difference between an entity's 2019 and 2020 revenue, though would be reduced by amounts received through PPP loans.
- Awards cannot exceed $10 million and are limited to $5 million per location for companies with multiple locations.
- **Eligible entities:** restaurants, bars, food trucks, brewpubs, saloons, inns, taverns, tasting rooms, food carts, and caterers, including businesses in airport terminals and tribally owned entities.
- **Ineligible entities:** businesses run by state or local governments; companies with over 20 locations including affiliates, live venues seeking grants under CRRSSA, and publicly traded companies.
- **Eligible expenses:** payroll, mortgage, rent, supplies (including PPE), general food and beverage costs, and paid sick leave.
- Clarifies that loans under this category are excluded from gross income for tax purposes

<u>Community Navigator Pilot Program</u>

- Provides **$100 million** for a pilot program for community navigators that provide community navigator services to eligible businesses.
- **Eligible entities:** Community organizations, community financial institutions, and private nonprofits.
- **Required services from eligible entities:** outreach, education, and technical assistance targeting eligible businesses to increase awareness of SBA programs.
- **Required targets of services:** small businesses, with priority for small businesses owned by women, veterans, and socially and economically disadvantaged individuals.

- SBA will make grants to or establish contracts with private nonprofits, states, tribes, and local governments to ensure the delivery of free community navigator services to current and prospective owners of small businesses.

Shuttered Venue Operator Grants

- Provides an additional **$1.25 billion** for the Shuttered Venue Operator Grant (SVOG) program.
- **Eligible entities:** live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, and talent representatives. Additionally, entities of these types owned by state or local governments (i.e., museums or historic homes, etc.) are eligible to apply if the government-owned entity also acts solely as a venue operator, museum, etc. For example, a city parks and recreation department that operated a bandstand in a public square along with running various nature parks would not qualify as an eligible entity for an SVOG. Finally, each subsidiary business owned by an eligible entity that also meets the eligibility requirements on its own rights will qualify as an eligible entity.
- Eligible applicants can receive SVOG and PPP funds, but SVOG grant amounts will be reduced by any loans received through PPP following the enactment of the CRRSSA.

Economic Adjustment Assistance

The ARP provides **$3 billion** to the Department of Commerce Economic Development Administration to "prevent, prepare for, and respond to coronavirus and for necessary expenses for responding to economic injury as a result of coronavirus." Twenty-five percent of the funds under this section shall be for assistance to "States and communities that have suffered economic injury as a result of job and gross domestic product losses in the travel, tourism, or outdoor recreation sectors."

State Small Business Credit

The State Small Business Credit Initiative (SSBCI) was created through the Small Business Jobs Act of 2010 (P.L. 111-240) to provide funding to states based on their proportions of unemployed persons as a percentage of the national total.[3]

The ARP recycles, amends, and funds this program with **$10 billion**, requiring that, within 30 days from the date of enactment of the legislation, all 50 states receive a portion of **$9.5 billion** equal to the average of the funds. The bill sets **$500 million** aside for separate distribution to tribal governments.

Funds are "to provide support to small businesses responding to and recovering from the economic effects of the COVID-19 pandemic, ensure business enterprises owned and controlled by socially and economically disadvantaged individuals have access to credit and investments, provide technical assistance to help small businesses applying for various support programs, and to pay reasonable costs of administering such Initiative."

[3]"State Small Business Credit Initiative (SSBCI)." U.S. Department of the Treasury Resource Center, updated December 31, 2015.

TAX

Child Tax Credit Provisions

The ARP adjusts the Child Tax Credit for 2021 in several ways, though it is critical to note that these changes expire after this year, reverting to the tax laws in place before the ARP's passage.

First, the ARP makes the 2021 Child Tax Credit fully refundable, instead of partially refundable. Second, it raises the cutoff age for eligible children from 16 to 17, allowing individuals to claim this credit for children for an additional year. The ARP also raises the amount of the credit from $1,000 to $3,000 for each child over the age of six and $3,600 for each child under the age of six.

The legislation can provide advanced annual payment of this credit in two chunks, the first after July 1, 2021, and another after December 31, though individuals would have the option to decline the advance payment. The Treasury will be required to establish a way for entities to receive and process these requests.

The benefits provided under this section are reduced in phases beginning at $75,000 for individuals and $150,000 for joint filers. Once the amount of the credit is reduced to $2,000 per child, the phase-out requirements increase to their current levels - $200,000 for individuals or $400,000 for joint filers.

Adjustments to Earned Income Tax Credit (EITC)

- Adjusting the Earned Income Tax Credit for Individuals Without Children

This provision of the ARP package adjusted the EITC by lowering the qualification age from 25 to 19 for individual taxpayers without children and 18 for individual taxpayers experiencing homelessness or living in foster care. It also eliminates the maximum age to receive the credit, which is currently 65.

In addition, the ARP doubles the credit and phase-out percentages provided under the EITC from 7.65 percent to 15.3 percent. It also increases the earned income and phase-out amounts provided to individuals without children. At present, the credit amount is $4,220, with a phase-out amount of $5,280. The ARP increases these numbers to $9,820 and $11,610, respectively.

These changes apply to tax years beginning after December 31, 2020.

- Allowing EITC for Children Without Social Security Numbers

The ARP strikes a current provision of the tax code by which individuals with any children who do not have sufficient tax identification numbers (TIN) or Social Security Numbers are ineligible from receiving the EITC. As such, individuals can claim their children regardless of their tax identification and immigrant status.

- Providing Credit to Separated Spouses

Under current law, married couples are able to claim a larger EITC than separated spouses. The ARP amends this to allow separated spouses to claim full credit if they spend at least 50 percent of the year as their child's primary caretaker.

- Treatment of Investment Income

Under the current tax code, individuals may be disqualified from receiving the EITC if they earn more than $2,200 in investment income annually. The ARP raises this threshold to $10,000.

Dependent Care Assistance

The Child and Dependent Care Tax Credit currently provides a refund for up to 35 percent of care expenses of up to $3,000 for one dependent or $6,000 for multiple dependents. The ARP makes changes to the Child and Dependent Care Tax Credit by increasing the threshold from $3,000 and $6,000 to $8,000 and $16,000, respectively, and raises the refundability from 35 percent of care expenses to 50 percent. It also begins to phase out the credit at $125,000 instead of $15,000. ARP also excludes up to $10,500 in employer-provided dependent care assistance, increasing it from $5,000.

These provisions apply to any taxable year beginning after December 31, 2020.

Employee Retention Credit

This ARP provision extends the Employee Retention Credit that was established in the CARES Act to December 31, 2021. It covers qualified wages for an eligible employee up to $10,000 per quarter.

Additionally, the ARP applies this protection to start-ups opened after February 15, 2020, and caps the credit for start-ups at $50,000 per quarter.